

VZCZCXYZ0004
RR RUEHWEB

DE RUCNDT #1052/01 3221543
ZNR UUUUU ZZH
R 181543Z NOV 09
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 7661

UNCLAS USUN NEW YORK 001052

SIPDIS

E.O. 12958: N/A

TAGS: [PREL](#) [AORC](#) [UNGA](#)

SUBJECT: SIXTH COMMITTEE DELIBERATES OVER PRINCIPLE OF
UNIVERSAL JURISDICTION

¶1. Summary: The Sixth Committee finished general debate on Agenda Item 84: The Scope and Application of the Principle of Universal Jurisdiction on October 21. Over forty-five delegations took part in the discussions with most agreeing that there exists no clear definition of universal jurisdiction. Delegations debated not only on the scope and application of universal jurisdiction but also on whether the Sixth Committee was the proper forum to consider the issue further. Various (mostly African) Member States criticized the improper use and politicization of universal jurisdiction and defended the immunity of heads of State and government. End Summary.

- - - - -
REGIONAL GROUP INTERVENTIONS
- - - - -

¶2. Australia, on behalf of Canada, Australia, and New Zealand (CANZ), thanked Liechtenstein and Tanzania for hosting a recent panel discussion on universal jurisdiction. CANZ noted that universal jurisdiction can be used to prevent impunity for crimes such as piracy, genocide, war crimes, crimes against humanity, slavery, and torture. According to CANZ, universal jurisdiction should be used to cover jurisdictional gaps and should be exercised in good faith consistent with international law.

¶3. Tunisia, on behalf of the African Group, warned that States should avoid the abuse or politicization of universal jurisdiction. Tunisia referenced several African Union resolutions on the alleged abuse of universal jurisdiction in targeting African officials. The African Group asked how universal jurisdiction should interact with principles of international law such as that of sovereign equality of States and immunity of officials. Tunisia called for a definition of universal jurisdiction based on objective standards as well as the creation of a mechanism to ensure its proper application. According to Tunisia, the Sixth Committee is the best forum to discuss this issue (as opposed to the International Law Commission (ILC)).

¶4. Mexico, representing the Rio Group, contended that universal jurisdiction is exceptional in nature. Mexico noted that a State had the duty and capacity to exercise universal jurisdiction when relevant. The Rio Group welcomed the debate, however preliminary, of universal jurisdiction in the Sixth Committee but warned of a duplication of efforts as the ILC is reviewing a related issue - the obligation to extradite or prosecute.

¶5. Iran, on behalf of the Non-Aligned Movement (NAM), said that the principles of sovereign equality of States and non-interference in internal affairs should be strictly observed. The NAM expressed concern with use of universal jurisdiction to prosecute officials with immunity and commented that judgments and analysis from the International Court of Justice (ICJ) and the ILC on the subject will prove helpful to the Sixth Committee while debating this issue. The NAM stated it was open to considering mechanisms to ensure the proper application of universal jurisdiction.

- - - - -
COMMON THEMES
- - - - -

¶16. Every intervention during the debate noted the confusion over the definition, applicability, and scope of universal jurisdiction. As Swaziland put it, "universal jurisdiction has a serious identity crisis." Many delegations began their interventions by providing a definition of what they refer to as universal jurisdiction. For example, Switzerland only exercises universal jurisdiction when 1) the crime is of a serious nature covered under an international agreement, 2) the person suspected of the crime is present on Swiss territory, and 3) it does not extradite the person for criminal prosecution to another State with primary jurisdiction. Norway, however, defines the concept as "a state's institution of criminal proceedings against a person who is not a national of that state, for an alleged crime (of a serious nature) committed outside the territory of that State." According to Norway, the authority to exercise universal jurisdiction would be based on treaty or customary international law. Also, there was some inconsistency in which crimes States believe may be prosecuted using universal jurisdiction. For example, some States said that only slavery and piracy are subject to universal jurisdiction while others consider that genocide, torture, war crimes, and crimes against humanity may also be prosecuted under universal jurisdiction.

¶17. Some States stated that they consider universal jurisdiction an accepted part of international law (e.g. El Salvador, Guatemala, Germany, and Finland) and can be applied

to certain grave crimes, while others (e.g. China) contended otherwise. China went so far as to say that universal jurisdiction was "only an academic concept" and did not yet constitute an international legal norm. In numerous interventions, States, such as Mexico, described universal jurisdiction as a "complementary mechanism of criminal justice to combat impunity and strengthen justice at the international level."

¶18. Regardless of the definition or scope, States advocated against the politicization of universal jurisdiction. Only a handful of African States expressed the need for a mechanism to ensure its uniform application. Many said that the concept of universal jurisdiction is distinct from the jurisdiction of international courts or tribunals.

¶19. Several Member States (e.g. Swaziland, China, Sudan, Indonesia, Iran, and Russia) reminded the Sixth Committee members that the immunity of heads of State must be respected when applying universal jurisdiction. Similarly, some African States reaffirmed the three African Union resolutions criticizing the abuse of universal jurisdiction.

¶10. Another point of contention in the debate centered on which forum should tackle universal jurisdiction. Several countries (e.g. China, Guatemala, Slovakia, Finland, Mexico, and Burkina Faso) argued that the Sixth Committee was the proper venue while others (e.g. Costa Rica, Switzerland, Liechtenstein, and Peru) made the case for the ILC to review universal jurisdiction. Some felt that the Secretary-General should generate a report on universal jurisdiction including examples of States' domestic law and practice.

- - - - -
NOTABLE INTERVENTIONS
- - - - -

¶11. Austria acknowledged the confusion over the scope of universal jurisdiction. It noted the wide spectrum of definitions of the term, from a breach of international law to an encroachment on sovereignty to an important tool to combat impunity. Austria defined universal jurisdiction according to the definition of the Institut de Droit

International in Krakow and offered the following seven guiding principles: 1) universal jurisdiction refers to criminal matters; 2) universal jurisdiction only relates to the competence of the state to assert jurisdiction, not international criminal courts or tribunals; 3) universal jurisdiction presupposes the absence of a link with the State asserting jurisdiction; 4) universal jurisdiction may either be based on treaty or customary international law; 5) it is important to distinguish the different forms of exercise of jurisdiction; 6) universal jurisdiction must be distinguished from questions of immunity; and 7) universal jurisdiction is different from the duty to extradite or prosecute.

¶12. Sudan disparaged universal jurisdiction saying it represented an erosion of States' commitment to the U.N. Charter. In addition, Sudan complained about the selective use of universal jurisdiction, observing that States used double standards in its application. Sudan warned that its abuse could threaten the political and economic development of African States. According to Sudan, universal jurisdiction may only be exercised against slavery and piracy. Sudan quoted Henry Kissinger's article entitled "The Pitfalls of Universal Jurisdiction," when urging extreme caution over its use.

¶13. The United States observed that the definition of universal jurisdiction remains "unsettled," and encouraged the exchange of information about the practice among Member States as the United States was interested in how other States defined the principle.

¶14. Finland differentiated between universal jurisdiction and the ICC. It argued that universal jurisdiction falls under international customary law with regard to certain international crimes and that it is reflected in treaty law. Finland explained that while universal jurisdiction and the obligation to extradite or prosecute are two separate principles, they are closely related and recommended discussing this relationship with the ILC. Finland closed by citing this year's case that charged a person residing in Finland with genocide under universal jurisdiction. Both the Finnish Ministers of Foreign Affairs and Justice affirmed Finland's competence in this case and investigators have traveled outside of Finland to collect evidence.

¶15. Spain noted the long history of universal jurisdiction as a basis for prosecuting grave crimes and preventing impunity and the number of international instruments referencing universal jurisdiction (e.g. the Geneva Convention and Additional Protocols, the Torture Convention,

and the Montreal Convention). Spain described recent domestic legislative reforms intended to regularize the use of universal jurisdiction. The new law provides that Spanish judges may investigate grave international crimes if they have not been prosecuted or investigated effectively elsewhere and the accused is present in Spain or there are Spanish victims. Spain also emphasized the need to more precisely define and describe the modus operandi of universal jurisdiction and encouraged the consideration of the analysis and proposals of experts.

¶16. On November 12, the Sixth Committee recommended to the General Assembly the adoption of a brief resolution on universal jurisdiction. The resolution (a) requests that the Secretary-General of the United Nations invite Member States to submit information and observations on the scope and application of the principle of universal jurisdiction; (b) requests that the Secretary-General prepare and submit a report based on such information and observations; (c) decides that the Sixth Committee shall continue its consideration of the issue without prejudice to the consideration of related issues in other UN forums; and (d) decides to include the issue on the agenda of next year's sixty-fifth session.

Wolff